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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,864	06/12/2006	Christian Bichler	033033-031	1238

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EXAMINER	
LOFFREDO, JUSTIN E	
ART UNIT	PAPER NUMBER
3744	

NOTIFICATION DATE	DELIVERY MODE
09/22/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/553,864	**Applicant(s)** BICHLER ET AL.	
	Examiner JUSTIN LOFFREDO	**Art Unit** 3744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *24-44*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Cheryl J. Tyler/
Supervisory Patent Examiner, Art Unit 3744

/JL/

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for the following reasons: Regarding applicant's argument (Remarks, p. 9) that a person having ordinary skill in the art, hereafter a PHOSITA, would not have been motivated to combine the Ghodbane patent with the Bailey patent, the examiner respectfully disagrees. The Ghodbane patent discloses a jacketed heat exchanger alone, i.e. not incorporated into a functioning system. The Bailey patent discloses an integrated heating and cooling system having a functional refrigerant loop with a heat exchanger (10) incorporated therein. Therefore, it would have been obvious to combine the heat exchanger disclosed by Ghodbane to be incorporated into the heating and cooling system as the heat exchanger as taught by Bailey in order to enable the heat exchanger to function within a system for the purposes of exchanging between media so that effective refrigeration can take place. It should be noted that the examiner is not combining the entire disclosures of the Ghodbane and Bailey patents, rather the examiner has indicated that it would have been obvious to modify the arrangement of the evaporator disclosed by Ghodbane to be incorporated into the heat pump system disclosed by Bailey. Regarding applicant's argument (Remarks, p. 10) that the heat exchanger disclosed by Ghodbane allows heat exchange between three media and the heat exchanger disclosed in the system of Bailey allows heat exchange between two media, and thus the heat exchanger of Ghodbane is not incorporable into the system of Bailey without rearranging of other components and changing control criteria in the system, the examiner respectfully disagrees. It is not apparent as to why the heat exchanger disclosed by Ghodbane would not be incorporable into the heating/cooling system of Bailey since the heat exchanger disclosed by Ghodbane is capable of allowing heat exchange between three media (i.e. two isolated heat exchange media through duct system and a cross flow of air). Therefore, the heat exchanger of Ghodbane is capable of allowing heat exchange between two media, like the liquid to air heat exchanger disclosed in the system of Bailey which allows heat exchange between two media. Thus, examiner maintains that the incorporation of the heat exchanger disclosed by Ghodbane into the heating/cooling system of Bailey would have been obvious to a PHOSITA at the time of the invention as set forth in at least the rejection of claim 24. In response to applicant's argument (Remarks, p. 10) that since in Bailey the secondary air coil and water coil are taught as separate units the combination of the water coil with the air coil would not be done by a PHOSITA, examiner respectfully disagrees since it has been held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the rejections set forth, examiner has only modified the exchanger disclosed by Ghodbane to be incorporated into the heat pump system disclosed by Bailey, and the rejection of the claims should be considered in light of the combination set forth and not directed towards one reference.